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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,658	01/23/2001	Jeremmy A. Kenyon	41018.P009	3790

25943 7590 04/01/2004

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EXAMINER

NGUYEN BA, HOANG VU A

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 04/01/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/768,658

Applicant(s)

KENYON ET AL.

Examiner

Hoang-Vu A Nguyen-Ba

Art Unit

2122

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This action is responsive to application filed January 23, 2001.
2. Claims 1-24 have been examined.

#### ***Claim Objection***

3. Claims 6 and 18 are objected to because of the following minor informalities:
  - a. In claims 6 and 18 (line 3), the term – in – should be inserted between “the tasks listed” and “the said task list”.
  - b. In claims 6 and 18 (line 3), delete either “the” or “said” before “task list.”

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 15 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation “the server” at line 3. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections – 35 U.S.C. § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-24 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,742,829 to Davis et al. al. ("Davis").

### **Claim 1**

Davis discloses at least:

*accepting check in by a client computer at a first point in time to determine if the client computer's software needs to be updated (see at least Figure 3B and related discussion in the specification); and*

*providing the client computer with an update task list listing one or more tasks to be performed by the client computer asynchronously at a later point or later points in time to update the client computer's software is to be updated (see at least Figure 3B; Figure 3A, item 312; and related discussion in the specification).*

### **Claim 8**

Since claim 8 recites the same limitations of claim 1, the same rejection is therefore applied. Davis further discloses *performing said one or more tasks asynchronously at a later point or later points in time to update the client computer's software (see at least Figure 3A, item 312 and related discussion in the specification).*

**Claim 13**

Since claim 13 recites an apparatus comprising a storage medium that stores programming instructions executed by a processor to perform the same method steps recited in claim 1, the same rejection is therefore applied.

**Claim 20**

Since claim 20 recites a client computer comprising a storage medium that stores programming instructions executed by a processor to perform the same method steps recited in claim 1, the same rejection is therefore applied.

**Claims 2 and 14**

The rejection of base claims 1 and 13, respectively is incorporated. Davis further discloses *determining if the client computer's software needs to be updated* (see at least Figure 3B, item 354 and related discussion in the specification).

**Claims 3, 9, 15 and 21**

The rejection of the base claim is incorporated. Davis further discloses *re-contacting the server at a later point or later points in times to retrieve one or more software parts* (see at least Figure 3A, item 312 and related discussion in the specification).

**Claims 4, 10, 16 and 22**

The rejection of the base claim is incorporated. Davis further discloses *re-contacting one or more third part servers at a later point or later points in times to retrieve one or more software parts* (see at least Figure 3A, item 312; Figure 2, items 212, 214, 202; and related discussion in the specification).

**Claims 5, 11, 17 and 23**

The rejection of the base claim is incorporated. Davis further discloses *one or more installation tasks to be performed asynchronously at a later point or later points in time upon asynchronously obtaining one or more software parts* (see at least Figure 3A, item 312 and related discussion in the specification).

**Claims 6 and 18**

The rejection of the base claim is incorporated. Davis further discloses *servicing one or more subsequent asynchronous requests from the client computer for software parts in accordance with the tasks listed in the task list* (see at least 3B, item 340 and related discussion in the specification).

**Claims 7 and 19**

The rejection of the base claim is incorporated. Davis further discloses *asking the client computer to retry one or more of the subsequent asynchronous requests for software parts* (see at least Figure 3A, item 312 and related discussion in the specification).

**Claims 12 and 24**

The rejection of the base claim is incorporated. Davis further discloses *scheduling asynchronous performance of said tasks* (see at least Figure 3A, item 312 and related discussion in the specification).

**Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Antony Nguyen-Ba, whose telephone number is (703) 305-0103. The examiner can normally be reached on Tuesday - Friday from 6:15 – 3:45 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam, can be reached at (703) 305-4552.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Central Fax Number

(703) 872-9306



**ANTONY NGUYEN-B**  
**PRIMARY EXAMINE**

Art Unit 2122

March 30, 2004